

General and Revenue Secretariat.

Serial Nos.

Eight

Part B for

March 1931

SUBJECT

*Recovery of a Zakat loan granted to me
Kengeri Abdulla Sah*

GENERAL AND REVENUE SECRETARIAT.

FILE HEADING.

Execution. Case no 304 / 20-29 on the file of

T.

The Pfr B'lore

No. P. 2546

forwarding a copy of

the letter from the D.C. B'lore with the file of papers

Ex: 304/20-29 2 Mpts.

re: the recovery of the loan of Rs 20/- granted to me

Kanjisab, and requesting to stop the case except

intimating the date of hearing and the stage in

which the case stands.

Letter No. 190/30-31 dated 17.11.30

from the Pfr B'lore expressing his opinion

in Ex: 304/20-29 on the file of the I. Munsiff at

B'lore and informing that the case stands

adjourned

This Case since he appears under the
Land improvement Loans Regⁿ W of 1890
Can aⁿ be collected as due payable
under land revenue.

SD
21/11 Issue the draft put up

MM/
21/11

Bangalore

No. P. 2955 dated 25.11.30 requesting
to examine the question with ref^{ce} to sec
143 of the d.R.C. & the land improvement
Loans Regⁿ W of 1890, and to send me
Considered opinion in the matter within a
week.

4

Letter no. 207/30-31 d 27.11.30 from the
PPr. B'lore giving his Considered opinion
in the Case referred to and stating that
section 143 of the d.R.C. ~~does not~~ and
provisions of d. improvement loans
Regⁿ do not govern the fact of the Case

5

will pass to the creditor as stated at the
date of the service of the notice

Kind attention is invited to
the fact that the loan granted in the
present case is a distress loan
directly coming from the purview of
the Land Improvement ^{Loans} Act of 1890 but
construable under sec 194 of the L.R.C.

Para 2 of the sec 194 L.R.C. unequivocally
says that "even such advance shall when
it becomes due be recoverable

as if it were an area of land revenue due
by the person to whom the advance was
made or by his estate. Under these

circumstances it is not possible to bring
in the way either the Bombay Land Revenue
Code or the British Act of 1890
which the learned public prosecutor
has elaborately considered.

150
20/11

referred to does not in any way help the contention put forth by the PPr. ~~Further~~ slightly further on, the learned author contemplates Cases in which the collector can claim priority over even a mortgage. When the time ^{comes} for payment of the money in the custody of the Court. The Cases ~~is~~ quoted by the PPr, are not Cases under Sec 143 K.R.C. or similar provisions elsewhere - In 1930 Sindh B.S., Govt's claim was given precedence over the rights of a pledgee bank with respect to certain stock of wine. The Court holding that Sec 137 of the Bombay K.R. Code which word word ^{corresponds} ~~correspondence~~ to our Sec 14 gives such priority -

In the facts of this case, however, point does not seem to arise for decision - In the Rev: sale held on 25/9/1 Govt have become purchasers of the right, title & interest of Abdullasab in the land which was at the time of sale not only subject to a prior encumbrance but also the matter of a pending litigation. Hence in the execⁿ. proceedings taken by the

mortgagee took as purchaser & the
right title & interest of the first debtor
cannot claim any priority

Draft to P.P. Bank for order.

Legal M.

To

Th. P.P. Bank

No. P. 3095 d. 22.12.30 thing that Govt.

Cannot rest the sale of the Bank in execution of a
decree obtained by such Bank encumbrance but the
Govt.'s claim may however be raised when the Court
takes up the question of the disposal of the proceeds of the
sale held in execution and suitable orders should be

The D.C. Bangalore

No. P. 3591 dated 26.12.30 forwarding a
Cp. of the letter from the P.P. B'lore and
enquiring where in view of the circumstances
mentioned here in any further action is still
necessary

Please Remind ~~me~~
on 3/1/31 if no reply is
received by then.

DM
29/12

Sus A

TSD
27/12

Sus A 1/1/31
TSD 2/1
DM
7.

Letter No. C.O. P.R. 89/30-31 dated 15th Jan 1931
from the D.C. Bangalore stating that no
further action is necessary under the circumstances
and that the Comptroller has, however, been requested
to intimate where the full amount of loan will
invest here as has been advised in the books as
reported by Auditor & Sub-division officer Doddaballapur.

D.C. of opinion that no
further action appears to be necessary; and
he promises to send an early reply as soon
as he receives information from the Comptroller.

as to the adjustment of loan with interest
in the books of his office as reported by
the Amildar and the Sub-division officer
of Doddaballapur of the Sub-division. Further report
from DC may be awaited

TSB
17/1

Yes

me

17/1

Letter no C.S. Loans 2145730-31 dated 27.2.21
from the D.C. Bangalore informing that a
report will be sub^d after hearing from the
Comptroller who has been referred to verify
the credit in the books of his office

This may be awaited

TSB
5/3

This may be filed now,

me

5/3

FROM

Moin-ul-Vizarath A.K. Syed Taj Peeran. Esq.. B.A..
*Deputy Commissioner,
Bangalore District.*

TO

P. Mahadevayya, Esq., B.A., B.L.,

*Secretary,
to the Government of Mysore.
Law Department, Bangalore.*

SIR,

Subject:—

I have the honour to state that a distress loan of Rs.25/- was granted to one Kengeri Abdulla Sab on 21-6-27 by the Amildar of Nelamangala on the security of his Bagayat land bearing S.No.6 with an extent of 24 guntas assessed at Rs.2-8-0 and a house No. 264 of Dodbele village and owing to non-repayment of loan amount by the party, both the properties were sold by the Amildar of Nelamangala on 25-9-1928 for Rs.150/- which stood in the name of Government.

As these properties had been previously mortgaged to one Arale Appajappa of Dodbele village, he filed a suit against the mortgager (Kengeri Abdulla Sab) before the Second Munsiff, Bangalore (vide O.S. suit No.683/27-28) with the result that the properties were attached.

He has now applied to the Court in execution case No.304/28-29 that Government may be made a party in the said suit under the circumstances that he is not responsible for the loan amount which was granted after he obtained the decree from the civil court and after the attachment of the properties in question.

As Government has to recover ^{the} loan amount it is necessary to see that interest of Government in the said property is not affected by non-representation.

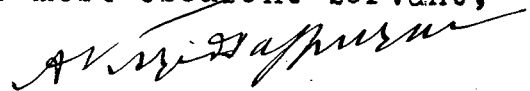
a party to the suit and addressed Government for the conduct of this suit through the Public Prosecutor, Government Pleader as the proceedings in this suit affect Government.

In these circumstances, I request that the Public Prosecutor may be directed to appear on behalf of Government and conduct the proceedings in the court of 2nd Munsiff, Bangalore. The entire records are herewith submitted.

I have the honour to be,

Sir,

Your most obedient servant,



Deputy Commissioner,
Bangalore District.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

Dated, Bangalore, 6/11

No. P 2546 Endore
Law 60.30.2

From

The Secretary to the Government of His Highness the Maharaja of Mysore,
Law Department.

To

The Public Prosecutor,
Bangalore Division.

Sir,

I am to forward herewith a copy of the Bangalore Deputy Commissioner's letter No. J.8-P.R. 89/30-31 dated 30th October 1930 regarding the recovery of a takavi loan of Rs 25/- granted to one Kengeri Abdulla Sab, with the file of papers sent therewith and to request you to study the case carefully and give your considered opinion as to the best line of action that should be taken by Government in the Execution case No. 304 of 28-29 on the file of the II Munsiff of Bangalore, so as to safeguard Government interests in the properties involved..

The matter may be treated as urgent and the date to which the execution case is posted and the stage at which it is at present may be intimated at an early date.

I have the honour to be,

Sir,

Your most obedient servant,

M. Peraraj

For Legal Remembrancer &
Secretary to Govt.,
Law Department.

P. 2547

8/11-30 Tso

Copy of the letter is forwarded with Compliments
to the Deputy Commr. B'lore for information
with ref^{ce} to the letter no. C.S.-P.R. 89/30-31
dated 30th Oct 1930.

Team 00-30-2

To

The Public Prosecutor
Bangalore

Sir,

I am to forward herewith
Bangalore Deputy Comr's
a copy of the letter No: C8-P. R.
89/30-31 dated 30th October 1930
~~the~~ regarding the recovery of a
taxi loan of Rs 25/- granted to
one Kengeri Abdulla Sab, ~~and~~
with the file of papers sent
herewith and to request you
to study the case
and give your considered
as to the best line of action
should be taken by Government
in the execution case No: 304 of 28.29
on the file of the II Munsiff of
Bangalore, so as to safeguard
foot-interests in the properties
involved

The matter may be treated
as urgent and the date to which
the execⁿ case is posted and the
stage at which it is at present
may be intimated at an early
stage.

Date:-

The public Prosecutor
Bangalore.

DM To

19/11/30

5-12-30

49

Law

20/11

The Legal Remembrancer and Secretary
to Government Law Department
Bangalore.

with reference to your letter no. p 2546

Law '60.30.2

of the 6th instant I have the honour to reply as
follows:-

In this case the facts are as follows

for areas of Kandayam and loan amount also and the
property was sold. Against this sale Revenue Appeal 10/27-18
was filed by Appaiappa before the Doddaballapur Sub division
Officer who on 4/8/18 set aside the sale and ordered Amildar
to bring the property for fresh sale subject to first mortgage.
It seems also to have been passed subsequently in his
favour. In accordance with this order of the Sub-division Officer
the Amildar held a fresh sale on 25/9/1918; for want of bid
the property was purchased in the name of Government. The
seller has filed a petition on 25/11/1918 in the execution
case before the Second Munsiff. (Ex 304 of 22-18 under section 47
and 157 etc., praying that the Government should be made a
party. On these facts I am of opinion that.

- (1) That the loan is subject to the prior mortgage of Appaiappa
- (2) That the sum due to the Government can only be recovered
after satisfying the mortgagee's mortgage amount costs & etc.,
- (3) That the Amildar of Nelamangala should come on the
record and that suitable orders must be obtained from the court
since the above sale is not binding on Appaiappa as it is affected by
retention of his Pendent. The ^{execution} case is posted to 5/12/1930. The entire file of
records are returned herewith.

I have the honour to be
Sir,
your most obedient servant.

B. N. V. Reddy.
Public Prosecutor
Doddaballapur

File No. 60-30.

Serial No. 4

No. D2955

Immediate Enclosure

To

The Public Prosecutor
Bangalore

Sir,

With reference to your
letter No. 190/30-31, regarding
the recovery of a Taxation
Loan granted to one Kengeri
Abdulla Sah, I have the
honour to request you
to kindly examine the
question further with
reference to sec 143 of
the Land Revenue Code
and the Land Improvement

Loans Refⁿ II of 1890

and send me your considered

opinion within a week

so that necessary instructions

may be issued for further

action being taken in the

Execution case 304 of 28.29.

On the file of the II Bench

Bangalore, posted for hearing

to 5/12/30 -

The entire file of records

are herewith returned for

I have the

one

for legal R^y

The Public Prosecutor,
Bangalore Division.

With reference to your letter No.190/30-31, regarding the recovery of a Takavi Loan granted to one Kengeri Abdulla Sab, I have the honour to request you to kindly examine the question further with reference to Section 143 of the Land Revenue Code and the Land Improvement Loans Regulation IV of 1890 and send me your considered opinion within a week so that necessary instructions may be issued for further action being taken in the Execution case 304 of 28-29 on the file of the II Munsiff Bangalore, posted for hearing to 5-12-1930.

The entire file of records are herewith returned for reference.

I have the honour to be,

Sir,

Your most obedient servant,



For Legal Remembrancer &
Secretary to Govt..

Law to 30-5

The public prosecutor
Bangalore.

Legal Remembrancer,
and Secretary to Government
Law Department,
Bangalore.

Sir,

With reference to your letter no D. 2955
Law

of the 28th instant I have the honour to state
as follows

that Section 143 of the Land Revenue Code is applicable. That section cannot be availed of with loans advanced by Government. This view is supported by Text writers as well as Case Law on the Subject ~~vide R. v.~~ Joglekar's Commenting

Section 137 of Bombay Land Revenue Code (which is analogous to S. 143 of our Land Revenue Code)

The meaning of this section is illustrated by the following example. A holds land assessed at Rs 10 which has a mortgage charge of Rs 100. If A has not paid Rs 10 as land Revenue due in respect of the land, the land itself can be forfeited to Government free of the mortgage charge (Sections 56 and 153)

But if there is no arrear of Land Revenue due in respect of the land and if A owes to Government Rs 100 on account of a toll contract which is recoverable as an arrear of land revenue under section 187, the land cannot be forfeited free of the mortgage charge under section 153 but only the right, title and interest on A in this land can be sold under Section 153. The bidders at the auction will therefore be responsible to the mortgagee for Rs 100. If he bids Rs 50 he will have to satisfy the mortgagee's claim of Rs 100 in addition to Rs 50. Thus the real value of the land is Rs 150 although the highest bid is Rs 50.

(R. v. Joglekar's Land Revenue code. 1st edition page 449)

In 27 Madan case age 391. Their Lordships of the Calcutta High Court hold that under Section 7 of the Land Improvement Loans Act the land for which the advance is made is a security to the Government for the purpose of securing the repayment of the improvement charge and the Government was entitled to enforce that charge by sale in the ordinary manner (page 391)

In 29 Calcutta page 537, Their Lordships hold that "when a property is sold in enforcement of a certificate under Bengal Act VII of 1880, filed by the Collector to recover amount due to the Government for advance made under the Agriculturists' Loan Act, nothing but the judgment debtor's right, title and interest in the property at the date of service of the notice under Section 11 of Act VII of 1880 can pass to the purchaser. Such a sale has not the effect of a sale for arrears of land revenue or of an assignment to the purchaser of the mortgage-interest created in favour of the Government by the bond executed by the judgment debtor under the Agriculturists' Loans Act."

I solicit instructions as to the steps

to be taken in the Case the a
records are sent herewith.

I have the honor
to be Sir,
Your most obedient servant,
B. M. Alba,
Public Prosecutor

To

The Public Prosecutor,....

Bangalore

Sir,

With reference to your letter No.207/30-31 dated 27th Novr.1930, regarding the recovery of a takavi loan granted to one Kengeri Abdulla Sab, I have the honour to state that sec.143 of the Land Revenue Code applies to all claims of Govt. to any monies recoverable as an arrear of land revenue under sec.194 of the Code. The Commentary in para 5 of Note 1 of Joglekar's Land Revenue Code, page 44 clearly supports this view and your attention is also invited to a decision in A.I.R.1930 Sind page 185.

It is however not clear if the point arises now for decision in the case. The Claim under sec.143 can be put in only if the money due to Govt.

~~is still recoverable under the Land Revenue Code, and not when Govt have~~
in a revenue sale held for such purpose, purchased the right, title and
interest of the defaulter, in which case the purchase is apparently sub-
~~ject to the prior encumbrance and Govt cannot resist the sale of the~~
property in execution of a decree obtained by such prior encumbrancer.
Government's claim to the money, if yet recoverable, may however be raised
when the Court takes up the question of the disposal of the proceeds of
the sale held in execution, and suitable orders obtained thereon.

The records sent with your letter are herewith returned.

Further progress of the case has to be intimated to this office in due
course. *Further instructions, if any, may be taken from the D.C. Bangalore*

I have etc.

Legal Remembrancer.

*Copy to the D.C. Bangalore -
for intimation & necessary action*

WSP 3096 of 2/12

The public prosecutor,
Bangalore

To

The Legal Remembrancer
and Secretary to Government,
Law Department,
Bangalore.

Law
v/v Si

Re: - EX 304/18-19 on the file of the Second
Munsiff, Bangalore.

With reference to your letter no P. 3095/Law
60-206 of the 2nd instant regarding the recovery
of a Takavi loan granted to one Menger Abdulla
Sab, I have the honor to state that both the
Amildar Melamangala and the Sub-division
Officer Doddaballapur Subdivision report that
the Takavi loan amount has been recovered.

No.

3591(1)

To

The Deputy Com.
Bancalnest.

Sci

In continuation of this
Office No: - P 3096 dated 2nd
Dec^r 1930 regarding the
recovery of a loan
granted to one Kenger
Aboulha Sab I have the
honour to forward herewith
Copy of letter No: 265/30-3, dated
25th Dec^r received from the
Public Prosecutor, Bangalore &
to enquire whether in view
of the Circumstances mentioned
therein any further action
over

as proposed in your letter NO. CS-P.A. 89/30-31
of 30th Oct 1930 is still necessary -

- An immediate reply is
solicited since instructions
have to be sent early in the
matter to the P.P. Bore -

I have etc

My
For Legalist

The Deputy Commissioner,
Bangalore District.

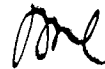
In continuation of this Office No.P. 3096 dated 2nd December 1930 regarding the recovery of a takavi loan granted to one Kengeri Abdulla Sab, I have the honor to forward herewith copy of letter No. 265/30-31 dated 20th December, received from the Public Prosecutor, Bangalore and to enquire whether in view of the circumstances mentioned therein, any further action as proposed in your letter No.C.8-P.R. 89/30-31 of 30th October 1930 is still necessary.

An immediate reply is solicited since instructions have to be sent early in the matter to the Public Prosecutor Bangalore.

I have the honor to be,

Sir,

Your most obedient servant,



For Legal Remembrancer and
Secy. to Govt.Law Deptt.

FROM

Moin-Ul-Vizarath A.K. Syed Taj Peeran,
Deputy Commissioner,
Bangalore District.

TO

P. Mahadevayya, Esq., B.A., B.L.,
Secretary,
to the Government of Mysore.
Law Department, Bangalore

SIR,

Subject:

With reference to your No.J.3591 (1) dated 20th December 1930 forwarding copy of letter No.265/30-31 dated 20th December 1930 received from the Public Prosecutor, Bangalore and enquiring whether any further action is necessary regarding the recovery of a takavi loan granted to one Kengeri Abdulla Saheb by the Amildar of Nelamangala Taluk on 21-6-1927, I have the honour to state that no further action appears to be necessary under the circumstances. The Comptroller has however been requested to intimate whether the full amount of loan with interest thereon has been adjusted in the books of his office as stated by the Amildar and the Sub Division Officer, Dodballapur Sub Division. On receipt of this information an early reply will be submitted.

Moin-Ul-Vizarath

A.K. Syed Taj Peeran, Esqr., B.A.,
Deputy Commissioner, & District Magistrate
Bangalore District.

To

ns⁹4/3

P. Mahadevayya, Esqr., B.A., B.L.,
Secretary,

to the Government of Mysore.

Law Department, B A N G A L O R E .

SIR,

Subject :—

With reference to your No.J.4935/Law dated Bangalore 9th February 1931 requesting to furnish further information regarding recovery of Takavi loans granted to one Kengeri Abdulla Saheb, I have the honour to state that the Amildar of Nelamangala reported that the full amount as noted below was recovered from the party, but the Comptroller, who was requested to verify the said credits in the books of his office as per this office letter No.C8-Loans.PR.89/30-31 dated 23-1-31 has not yet replied to enable me to submit a report in the matter. He has been reminded in the matter. On receipt of a reply, a report will be submitted.

Rs.8.13.5 dated 29.6.29
Rs.8.13.5 dated 30.4.30 }
0. 6.0 ,, }
Rs.8.13.5 } dated 3.12.30